

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINETH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.11251 of 2004

Between:

M/s. Himalaya Enterprises, Lakshmipuram,

Basinikonda Village, Madanapalle Mandal, Chittoor District,
rep. by its Managing Partner, Shaik Abdul Javedur Rahman.

..... PETITIONER

AND

1. Government of India, Ministry of Health and Family Welfare

Department of Health rep by its Secretary (Health), New Delhi.

2. The Director, Bureau of Indian Standards ,

Nampally Station Road, Hyderabad.

3. The Director Institute of Preventive, Medicine,

State Food Authority, Narayanguda, Hyderabad.

4. Food Inspector, Division II, Chittoor , Office of Gazetted

Food Inspector, Ramnagar Colony, Chittoor.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate Writs, order or Direction, declaring the action of the respondents in insisting the petitioner to stop manufacture of Mineral Water /packaged Drinking water till B.I.S. Certificate is obtained as illegal, arbitrary, capricious, unwarranted, violative of principles of natural justice and violative of Sec.14 of Bureau of Indian Standards Act and Consequently direct the

Respondents not to interfere with the manufacturing process and business activities of the petitioner; Award costs .

Counsel for the Petitioner: MR.N.SRIDHAR REDDY

Counsel for the Respondent No.1: MR.A. RAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondent No.2: MR. O. MANOHER REDDY

Counsel for the Respondent Nos.3 and 4: G.P. FOR MEDICAL HEALTH AND FAMILY WELFARE

The Court made the following:

ORDER:

In this writ petition, M/s. Himalaya Enterprises, a partnership firm involved in the business of marketing and manufacturing of mineral water and packaged drinking water, is the petitioner, seeking declaration that the action of the respondents herein in insisting upon the petitioner for production of Bureau of Indian Standards (BIS) Certificate and interfering with the manufacturing process and business activities of the petitioner as illegal and arbitrary.

This Court while admitting the writ petition passed interim orders in WPMP No.14293 of 2004 directing the respondents not to interfere with the manufacturing process of mineral water and packaged drinking water and business activities of the petitioner by insisting BIS Certificate. The Respondents 2 and 3 herein filed WVMP No.2718 of 2004 along with counter affidavit opposing the writ petition. When these matters are called, learned Counsel for the petitioner and learned Additional

Standing Counsel for respondents brought to my notice that all the questions raised herein were considered by a Division Bench in the judgment in W.P. No.5086 of 2001 and batch dated 30.9.2004 and the contentions of the petitioners were negatived. Insofar as the applicability of the Prevention of Food Adulteration Act, 1954 (the Act, for brevity) to water is concerned, the Division Bench having regard to the Prevention of Food Adulteration Rules, 1955 and other the relevant provisions, laid down as under:

It is thus clear that water, which is excluded from the definition of 'food' in Section 2(v) of the PFA Act, is ordinary water, which is clearly distinguishable from all kinds of 'mineral water' or 'natural water' and 'packaged drinking water' which may derive from any source of potable water subjected to treatments etc. Therefore, the notification issued by the Central Government dated 29-03-2001 declaring 'packaged drinking water' as 'food' for the purposes of provisions of the PFA Act, in no manner amounts to amending the provisions of the PFA Act as contended by the learned counsel for the petitioners. The article of 'packaged drinking water' is added as an additional item as 'food' for the purposes of the PFA Act in view of its nature and substance etc. The 'packaged drinking water' as defined hereinabove is comprehensive in its term, which takes into account the water that, is being manufactured and processed by the petitioners' companies. The impugned amendments, in our considered opinion, cannot be characterised as arbitrary, capricious, unreasonable and unjust as complained by the petitioners.

The Division Bench also came to conclusion that the previous consultation with Bureau of Indian Standards is not required when the standard for articles is prescribed by BIS. The relevant observations made therein are as follows:

That a reading of Section 2(a) together with 2(g) of the BIS Act makes it abundantly clear that the requirement of use of standard mark for article and process is not confined to articles or process manufactured or produced by the scheduled industry alone. The requirement of previous consultation with the Bureau by the Central Government as is required under Section 14 of the Act is only with reference to the article or process of the scheduled industry and not with regard to other articles.

Therefore following the Division Bench judgment as referred to herein above, the writ petition is dismissed.

V.V.S. RAO, J

October 29, 2004.

YS

To

1. The Secretary, Ministry of Health and Family Welfare

Department of Health, Government of India, New Delhi.

2. The Director, Bureau of Indian Standards ,

Nampally, Sation Road, Hyderabad.

3. The Director Institute of Preventive, Medicine,

State Food Authority, Narayanguda, Hyderabad.

4. Food Inspector, Division II, Chittoor , Office of Gazetted

Food Inspector, Ramnagar Colony, Chittoor.

5. Two CCs to the Government Pleader for Medical, Health

and Family Welfare, High Court Buildings, Hyderabad (O.U.T).

6. Two C.D. Copies.